IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 94 OF 2005

Harsha Nikhil Mehta .. Appellant

V/s

Nikhil Dhirajlal Mehta .. Respondent

Mr.P.G. Lad for the Appellant.

Ms. Seema Sarnaik for the Respondent.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 20TH OCTOBER 2005

P.C. :

1. Heard Mr.Lad in support of this Appeal and Ms.Sarnaik for the Respondent.

2. This Appeal seeks to challenge the order passed by a Judge of the Family Court, Pune on Review Application No.2 of 2004 on 10th May 2005 as also the order of which review was sought, namely the order dated 22nd August 2003.

3. The Appellant is the wife and the matrimonial dispute between her and the Respondent husband had been pending in the Family Court at Pune. The parties last resided together in Pune though they had some properties in Rajkot also. The Appellant wife hails from Rajkot.

4. The Respondent husband had filed a proceeding for restitution of conjugal rights in Pune, whereas the Appellant wife had filed a proceeding in the Civil Court at Rajkot claiming maintenance under the Hindu Adoption and Maintenance Act. The matter from Rajkot was carried to the Gujarat High Court and certain consent terms were arrived at between the parties in the High Court. The matter however did not rest over there and was further carried to the Apex Court.

5. In the Apex Court, two orders came to be passed. The first order was passed on 15th April 2002. The Apex Court disposed of the proceedings from the Court at Rajkot and those at Family Court at Pune by withdrawing them from those courts and directed that the same be disposed of in terms of the consent terms filed between the parties in the High Court at Ahmedabad. Subsequently, the court modified the earlier order partly and directed the Family Court at Pune to pass order in terms of the order passed by the Apex Court on 15th April 2002. This order was passed on 28th October 2002.

6. The submission of the Appellant is that in view of these two directions what the Family Court was expected to do was to pass a decree of divorce in terms

of the understanding arrived at between th parties in Gujarat High Court. The grievance of the Appellant is that the Family Court did not do the needful. When an application was filed before the Family Court to pass appropriate order, all that the Family Court did on 22nd August 2003 was to file that application. It was in these circumstances that a review application was filed and that also came to be rejected by the second order.

7. It is the submission of Mr.Lad, learned counsel for the Appellant, that in this manner the proceedings, which were expected to be concluded appropriately, have not been so concluded. Ms.Sarnaik, learned counsel for the Respondent, on the other hand, submits that there were certain things to be complied with by both the parties as per the consent terms. That has not been done.

8. In view of the submissions of both the learned counsel, we tried to find out as to what were the remaining differences. We were informed that some of the ornaments, which the Appellant was to hand over, had not been handed over. There was also problem with respect to execution of release deed and also passing over of the ownership of the property at Rajkot to the Appellant.

9. After the matter was adjourned from time to time, now the Appellant as well as the brother of Respondent, who is his Constituted Attorney, have filed affidavits. In these affidavits, they have agreed for resolving the remaining dispute in the manner indicated in both the affidavits. Mr.Lad has assured that the ornaments, which are remaining with the Appellant, will be handed over to the Respondent's brother during the course of the day. A provision is also made as to when the release deed will be signed. It is also stated that the income tax papers of the Appellant, if available, will be returned to her and, in any case, her Permanent Account Number will be informed to her. The Respondent will transfer the property in Rajkot to Appellant and pay the transfer charges.

10. It is accepted by both the parties that the diamond bangles, which were to be handed over by the Appellant to the Respondent, have not been handed over. They are supposed to be worth Rs.40,000/-. An amount of Rs.2,50,000/- meant for the Appellant has been deposited in this Court. This being the position, it is requested by both the counsel on instructions that the deposit be broken and an amount of Rs.40,000/- be paid over to the Respondent and the remaining amount with interest be paid over to the Appellant. It is ordered accordingly.

11. Both these affidavits contain the solemn undertakings given to this Court. We accept those undertakings. Parties are directed to act accordingly. In view of these undertakings, instead of sending the matter again to the Family Court for passing an appropriate order, as directed by the Apex Court, we pass the order as expected by the Apex Court and the marriage between the Appellant and the Respondent shall stand dissolved by a decree of divorce on the terms as have been agreed in the Gujarat High Court as also in the two affidavits which are tendered to this Court.

12. On tendering a certified copy of this order, the Appellant will be entitled to withdraw the amounts which are meant for her and which are lying in the Family Court at Pune.

13. Both the parties are agreeable that though the decree of divorce is passed, now it will become operational only after all the above referred requisitions are complied with. Parties are expected to comply on an outer side within 6 months from today.
Appeal disposed of.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)